

**THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

Jeffrey Bernstein, Esq.
**MCELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP**
570 Broad Street, Suite 1401
Newark, NJ 07102
Telephone: (973) 565-2183
Facsimile: (973) 622-5314
E-mail: jbernstein@mdmc-law.com

Counsel to New Jersey Economic Development Authority

In re:

20230930-DK-BUTTERFLY-1, INC., f/k/a BED BATH
& BEYOND INC., *et al.*,
Debtors.

MICHAEL GOLDBERG, as Plan Administrator for 20230930-
DK-BUTTERFLY-1, INC., f/k/a Bed Bath & Beyond Inc.,
Plaintiff,
v.

NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY,
Defendant.



**Order Filed on February 4, 2025
by Clerk
U.S. Bankruptcy Court
District of New Jersey**

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

Adv. No. 24-01443-VFP

**ORDER GRANTING WITHOUT PREJUDICE DEFENDANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

The relief set forth on the following pages, numbered two (2) and three (3), is hereby
ORDERED.

DATED: February 4, 2025

**Honorable Vincent F. Papalia
United States Bankruptcy Judge**

Upon the motion (the “Motion”) of Defendant, New Jersey Economic Development Authority (“NJEDA”), in the above-captioned adversary proceeding (the “Adversary Proceeding”), for an order pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure and Rule 12(c) of the Federal Rules of Civil Procedure, granting NJEDA judgment on the pleadings in the Adversary Proceeding; and having reviewed the Motion and all papers filed in and argument opposition thereto; and after a hearing on the Motion; and it appearing that due and adequate notice of the Motion having been given to all parties entitled thereto and no other or further notice is necessary; and the Court having determined that the relief sought by the Motion is proper; and for the reasons set forth on the record at the hearing on the Motion; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED as follows:

1. The Motion for Judgment on the Pleadings is GRANTED without prejudice to Plaintiff’s right to file a motion for leave to file an amended complaint.

2. The Complaint in this Adversary Proceeding is hereby dismissed without prejudice.

3. In an effort to streamline future briefing regarding a motion for leave to file an amended complaint, the parties agree to the following schedule regarding briefing and potential oral argument concerning such motion:

I. Within thirty days of the entry of this Order:

(A) Plaintiff shall file a motion for leave to file an amended complaint with the proposed amended complaint and a supporting memorandum of law setting forth his position regarding why the Court should permit the filing of the amended complaint.

(B) Defendant shall submit a Memorandum of Law setting forth its position regarding why the August 7, 2023 termination letters it issued (which are attached as Exhibit D to the Complaint) were effective “to withhold payment of all Grant payments not yet paid at the time

of the default during such time as an Event or Events of Default remain uncured” as set forth in Section 15 of the parties’ grant agreements at issue in this Adversary Proceeding.

II. Within thirty days of the filing of the papers set forth in subparagraph I above, the parties shall file responses thereto.

III. Within seven days of the filing of the papers set forth in subparagraph II above, either party may request oral argument on the matters set forth in subparagraph I above.

4. The parties may agree in writing, without further order of the Court, or upon a motion for good cause shown, to extend the deadlines set forth in paragraph 3 above.